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COUNTY OF ORANGE

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October 3, 2018

S-400

VIA FACSIMILE (310) 586-0582 AND U.S. MAIL

Adil M. Khan, Esq.
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1840 Century Park East, Suite 1900
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Re: *Global Tel*Link Contract Inmate Telephone Services Contract with County of Orange, MA 060-15010542*

Dear Counsel:

We write to express our frustration concerning the piecemeal and incomplete information provided by Global Tel*Link (GTL) to date in relation to the above-referenced contract. As we explain below, based on facts that have recently come to light, GTL has apparently failed to take immediate actions as previously requested by OCSD in relation to the discovery of recordings between attorneys and inmates in the Orange County jails. Surely you are aware that, in 2015, GTL failed to transfer the phone numbers of over 1,000 attorneys that existed in the predecessor system – Lazerphone – to the new inmate telephone system. GTL's failure to transfer these phone numbers from the old system to the new system led to the improper recording of well over 1,000 potentially privileged phone calls between Orange County jail inmates and their attorneys.

Herein we ask that you respond to a series of questions in regards to what GTL has done since the failure to transfer the numbers to the new system was discovered in June. We also make demands in regard to additional steps we ask that GTL take to provide assurances to OCSD and the County that all improperly recorded calls between attorneys and their inmate clients have been identified. The OCSD not only needs accurate and complete information to effectively manage the jail but also demands that the Superior Court in both the Special Master proceedings in *People v. Does 1-58* and in *People v. Waring* similarly be informed.

As you are probably aware, on September 25, 2018, the Superior Court scheduled a hearing in the case of *People v. Waring*. An off-the-record meeting occurred at the courthouse that included GTL employee, George McNitt, and many others. During this meeting, Mr. McNitt revealed that the GTL recordings database contains 549 recordings of calls apparently made to Joel Garson, a criminal defense attorney in the County of Orange. These 549 recordings are in addition to the almost 1,100 recordings of calls, presumably to

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attorneys' phone numbers, that Executive Vice President Darren Wallace noted in his correspondence of July 27, 2018. Mr. McNitt also revealed that the almost 1,100 recordings originally found to exist, as reported in July 2018, were discovered by searching the current recordings database against a "2015 list" taken from the Lazerphone system, the predecessor platform to ICMv, the current platform.

You will also recall that when this issue was discovered in June, OCSD had learned that GTL only had a list of 72 phone numbers on its "private" list for OCSD's system.¹ OCSD staff worked with Russ Williams, OCSD's assigned GTL field service manager, to upload to the list of 72 phone numbers approximately 1,300 phone numbers that OCSD had record of being on a "do not record list" under the Lazerphone system that were/are attorneys' telephone numbers. (See attached e-mail strings on the subject.) After OCSD requested that the 1,300 numbers be added to the private list, OCSD asked whether there were any record of recordings to the then updated private list. In pursuit of this information, Mr. Williams sent the following e-mail (excerpted from the e-mail string referenced above and attached hereto):

From: Russ Williams
Sent: Friday, July 06, 2018 3:58 AM
To: Support <support@gtl.net>
Cc: Wayne Morris <wayne.morris@gtl.net>; O'Chareon, Diane <DOChareon@ocsd.org>; Matthew McFalls <Matthew.McFalls@gtl.net>; Justin Tidwell <Justin.Tidwell@gtl.net>; Ken McNiel <Ken.McNiel@gtl.net>; O'Neil, BUFFY M <BOneil@ocsd.org>
Subject: 1,300 number list

Team

The Sheriff at Orange County CA is requesting to know if any calls exist to each and any of the "privileged/Private" numbers for Orange County CA. (approx. 1382) This would be from Jan 2015 to present. (the list attached is only 1300 of the numbers)

Please open a ticket to confirm there "are no recordings available" for any of the numbers on the list.

¹ The current contract defines a phone number that is categorized as "private" as a number that "will not be recorded nor subject to monitoring." Since the discovery of the issue relating to the phone calls in June, OCSD has learned that there is both a "private" list and a "do not record" list. This letter is intended to address any phone number of an attorney that was in put into the GTL database categorized as "private" or "do not record."

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This info is needed asap so we will need an ETA if possible for gathering the info?

Thanks Team

R.D. "Russ" Williams CTM
Field Service Manager - Field Service Team



After the above e-mail, Mr. Williams forwarded to OCSD a list referencing 1,064 recordings to phone numbers, which Mr. Williams described as: "... the numbers called from the 1300 list." Based on the e-mail exchange with Mr. Williams, OCSD believed that the information regarding the number of recordings that exist in GTL's database was derived from cross-referencing the entirety of the OCSD's privileged/private numbers, as referenced by Mr. Williams, after the list had been updated with the 1,300 numbers provided by OCSD.

On July 25, 2018, at a meeting at Sheriff's Headquarters with Mr. Wallace, other GTL representatives, Assistant Sheriff Greenberg, Commander Balicki, Greg Boston, and other OCSD staff, GTL apparently provided a hardcopy list of recorded numbers that showed 1,079 recordings. GTL also provided a list referencing 58 recordings of phone calls that were accessed in some manner by GTL and/or Sheriff's staff. (See Mr. Wallace's letter of July 27, 2018.) It is unclear whether GTL provided an explanation for the difference in the number of recordings that was provided by Mr. Williams on July 11 and the number of recordings on the list provided at the July 25 meeting. In an abundance of caution, though, OCSD submitted both lists to the Court in *People v. Waring* in response to the Court's order to turn over all lists of recordings. OCSD continued to believe that both lists were derived from the newly-updated "privileged/private" phone numbers for Orange County.

This brings us to September 25, when the department's good faith belief was controverted by the new information provided by Mr. McNitt. Obviously, if GTL had derived the list of recordings based on the updated list of "privileged/private" phone numbers, which as Mr. Williams indicates in his e-mail total approximately 1,382 numbers, **Mr. McNitt should not have found an additional 549 recordings of calls to Mr. Garson.** Mr. Garson's two phone numbers were already on the list of 72 phone numbers when this issue was discovered in June. Thus, if the full list of 1,382 had been used to determine the number of recordings on the GTL database to privileged/private numbers, then the recordings of calls to Mr. Garson's number(s) would have necessarily already been found. One possible explanation for this discrepancy is that both the list of 1,064 recordings originally provided

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by Mr. Williams, and the list of 1,079 recordings provided by GTL at the July 25, 2018 meeting did not include review of the 72 phone numbers that were on the privileged/private list when this issue first arose in June.

Moreover, based on Mr. McNitt's statements on September 25, we suspect that the list that Mr. Williams provided containing 1,064 recordings and the list containing 1,079 recordings may have been created from different data sets. Based on the e-mail exchange with Mr. Williams, the list of 1,064 recordings should have been based upon the then-updated "privileged/private" list of numbers (approximately 1382 numbers). However, Mr. McNitt apparently indicated on September 25 that the list of 1,079 recordings was derived by relying on data drawn from the Lazerphone system as that list existed in 2015. GTL has provided no information about whether the data drawn from the Lazerphone system matches any of the updated privileged/private list of numbers.

Finally, during the September 25 meeting, OCSD learned for the first time that the list of 1,079 recordings only included *completed* calls. However, the list of 58 accessed calls, which was also provided by GTL to OCSD, included both *completed* and *incomplete* calls. This distinction is obviously significant because it explains why a telephone number on the list of 58 is not on the list of 1,079. Again, OCSD was left in the dark and given either incomplete or inaccurate information.

To avoid further compounding any misunderstandings and/or misinformation, we ask that you provide responses in writing to the following questions:

- 1) What was the basis for the list of 1,064 recordings provided by Mr. Williams on July 11, 2015? In other words, from what data was that list derived?
- 2) What was the basis for the list of 1,079 recordings provided by GTL to OCSD command staff at the meeting on July 25, 2018? In other words, from what data was that list derived?
- 3) Presuming that different data sets were used to create the two lists of recordings, why was this done and why was OCSD not made aware of this at an earlier date?

In addition, we make the following demands on GTL in regards to potential recordings that GTL may possess in its databases:

- 1) Run the attached list of 72 numbers, which existed in OCSD's "privileged/private list" as of June 11, against GTL's recordings database to determine what recordings exist to these numbers. We know that there should be at least 549 records, since Mr. Garson's numbers are on this list. Please ensure that the following data fields are on the list of calls to attorneys for which there is a record of a recording:

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- a. Complete/Incomplete to reflect whether the call was completed or not.
 - b. The date/time the call was made.
 - c. The PIN associated with the call.
 - d. The duration of the call.
 - e. Whether the call was accessed in anyway by GTL and/or OCSD staff. If a recording was accessed, provide the following additional information:
 - i. the identifier of the person accessing the call,
 - ii. the manner in which it was accessed, i.e., recorded, downloaded, or whatever other identifier the GTL system may have to reference the nature of how a recording/call is accessed
 - iii. when it was accessed
- 2) Please provide a copy of the list of recordings to the list of 72 numbers with the above mentioned categories to both the undersigned and to the Special Master in the case of *People v. John Does 1-58*, Case No. M-17638, filed under seal.
- 3) Preserve and sequester any recordings to the list of 72 phone numbers discovered such that no OCSD staff or GTL staff may access the recordings.
- 4) Confirm that the 1,300 numbers provided by OCSD to Mr. Williams on June 20th have been added to OCSD's list of privileged/private numbers in the GTL database such that calls made to those numbers are not recorded by the system. Please provide proof that this action has been taken.
- 5) Provide the undersigned a copy of the "2015 list" of numbers from the Lazerphone system referenced by Mr. McNitt on September 25.
- 6) Cross-reference the list of 1,300 provided by OCSD on June 20th to Mr. Williams, against the "2015 list" from the Lazerphone system referenced by Mr. McNitt. If GTL discovers any number on the 2015 list that is not on the list from OCSD, please do the following:
 - a. Provide a list of the number(s) to the undersigned,
 - b. Add the number(s) to the "privileged/private" list for OCSD,
 - c. Run the number(s) against the GTL recordings database to determine if any recordings (both complete and incomplete) exist,
 - d. Preserve and sequester any discovered recordings from access by OCSD and GTL staff, and

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- e. Determine if any of the recordings were accessed in anyway by GTL or OCSD staff.
 - f. If previously undiscovered recordings are found, provide a list of the phone numbers for which recordings exist to the undersigned and the Special Master in the case of *People v. Does 1-58*, filed under seal. The list should contain the same data fields as referenced above in paragraph 1. a. – e., above.
- 7) Determine which numbers have been added to OCSD's privileged/private list since June 12, excluding the 1,300 plus numbers that were provided by OCSD to Mr. Williams, and run those numbers against the GTL recordings database. If this results in discovery of more recordings, perform the same steps as noted in paragraphs 6) c. – f., above.

In short, OCSD needs to know about any recording of a phone call between an inmate at the OC Jail and his or her attorney. OCSD expects full transparency. If there is any data field that GTL believes that the OCSD should be aware of that is not requested above, please contact the undersigned immediately.

Please feel free to contact the undersigned with any questions or concerns.

Very truly yours,

LEON J. PAGE
COUNTY COUNSEL

By 
Wendy J. Phillips, Senior Deputy

WJP:azs

cc: Sandra Hutchens, Orange County Sheriff
Stuart Greenberg, Chief, Corrections Division, Orange County Sheriff